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Nos. 60, 61 and 62

In the Supreme Court of the United States

OCTOBER TERM, 1957

ATCHISON, TOPEKA & SANTA FE RAILWAY CO., ET AL., APPELLANTS

v.

DIXIE CARRIERS, INC., ET AL.

UNITED STATES OF AMERICA, APPELLANT

v.

DIXIE CARRIERS, INC., ET AL.

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

DIXIE CARRIERS, INC., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

MEMORANDUM SUGGESTING THAT THE CAUSE IS MOOT

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In the Supreme Court of the United States

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No. 60

ATCHISON, TOPEKA & SANTA FE RAILWAY CO., ET AL., APPELLANTS

v.

DIXIE CARRIERS, INC., ET AL.

No. 61

UNITED STATES OF AMERICA, APPELLANT

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DIXIE CARRIERS, INC., ET AL.

No. 62

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

MEMORANDUM SUGGESTING THAT THE CAUSE IS MOOT

These cases involve basically the question of whether an order of the Interstate Commerce Commission

vacating a prior order suspending newly filed rates under Section 15 (7) of the Interstate Commerce Act, as well as a Commission order granting temporary relief under Section 4 (1) from the long-and-short-haul provision of that section, are subject to judicial review.

Acting under Section 15 (7) of the Act, the Commission ordered the suspension of certain proposed railroad rate schedules pending a hearing and determination on the lawfulness of such schedules. At the same time, the Commission withheld relief from the long-and-short-haul provision of Section 4 (1) of the Act and assigned the matter for hearing along with the question of the lawfulness of the rates under Section 15 (7). Subsequently, the Commission vacated the suspension orders but continued the investigation into the lawfulness of the rates and, pending the hearing, granted temporary relief from the long-and-short-haul provision.

In this action brought by certain competing carriers who had filed protests against the proposed rate schedules, which had gone into effect in the interim, the District Court set aside the Commission orders. On March 25, 1957, this Court noted probable jurisdiction. 353 U. S. 906.

During the pendency of the judicial proceedings, the Commission continued its investigation of the rate schedules in question. On July 11, 1957, the Commission announced its decision in the case, holding that certain of the rate schedules had not been shown to be just and reasonable. The Commission accordingly ordered the schedules cancelled and the Fourth Section application denied, without prejudice to the establishment of rates not inconsistent with the findings made (Appendix, *infra*, pp. 5–44). On October 16, 1957, the Commission denied the railroads' petition for reconsideration (Appendix, *infra*, pp. 44–45).

In view of these developments, it is believed that the cause is now moot. Cf. *Arkansas & Louisiana Missouri Railway Co.* v. *Amarillo-Borger Express, Inc.*, 352 U. S. 1028 (involving similar issues). The Commission's order of July 11, as modified by its order of October 16, requires cancellation as of November 20, 1957, of the rate schedules involved in the orders enjoined by the District Court, and thus the propriety of the Commission's earlier actions vacating its suspension order and granting temporary Fourth Section relief is now only of academic interest. All the parties therefore join in requesting that the judgment below be vacated and the case remanded to the District Court with directions to dismiss the complaint. See *Sawyer* v. *Dollar*, 344 U. S. 806; *United States* v. *Munsingwear, Inc.*, 340 U. S. 36, 39;

Arkansas & Louisiana Missouri Railway Co. v. *Amarillo-Borger Express, Inc.*, *supra*.

Respectfully submitted.

J. LEE RANKIN,
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HARVEY HUSTON,
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Counsel for Appellees.

NOVEMBER 1957.

APPENDIX.

INTERSTATE COMMERCE COMMISSION

No. 31860[1]

STEEL PIPE—EAST TO SOUTHWEST

Decided July 11, 1957

All-rail rates on iron or steel pipe, in carloads, from points in western trunkline, official, and southern territories to points in the Southwest, found not shown to be just and reasonable. Schedules ordered canceled and fourth-section applications denied, without prejudice to the establishment of rates not inconsistent with the findings made.

Edwin N. Bell, Robert H. Bierma, Robert G. Boes, Ralph M. Buzek, J. T. Clark, James W. Hoeland, Harvey Huston, Richard J. Murphy, Walter G. Treanor, E. R. Gustafson, V. H. Livingston, R. B. Kelly, O. P. Wieland, J. A. Gorman, J. P. Canny, E. J. Heater, John P. Ganly, B. V. Reynolds, J. Grady May, and *Thurmond A. Miller* for respondents.

[1] This report embraces also Investigation and Suspension Docket No. 6491, Pipe, Official and Southern Territories to Southwest; Fourth-Section Application No. 30890, Steel and Wrought Iron Pipe to Kansas, Oklahoma, and Southwest Missouri; and Fourth-Section Application No. 31120, Steel and Wrought Iron Pipe to the Southwest.

John F. Donelan, Dickson R. Loos, Paul V. Miller, T. F. Lynch, Robert R. Wertz, Edward M. Boyne, J. Taylor, J. R. Lewallen, Robert J. Steele, R. R. Clark, W. G. Felton, J. F. Davis, John N. Lind, R. A. Eldridge, and *J. L. Guthrie,* for parties supporting respondents.

Harry C. Ames, Nuel D. Belnap, Richard J. Hardy, Harry W. Patterson, Donald Macleay, W. Y. Wildman, T. S. Christopher, L. L. Leonard, Erwin H. Strobel, Wesley A. Rogers, R. A. Ellison, Russell S. Bernhard, W. S. Jermain, J. Haden Alldredge, John C. Ridley, Thad Grundy, M. P. Hamby, Ralph W. Currie, B. M. Busby, Frank Kesler, R. K. Keas, Kenneth P. Tubbs, Robert B. Reedy, G. B. Perry, James P. Kenny, Rex W. Hall, Lon L. Nusom, and *James H. Eubanks* for protestants.

REPORT OF THE COMMISSION

Division 2. Commissioners Freas, Winchell, and McPherson

By Division 2:

Exceptions to the report proposed by the examiner were filed by the respondents and certain supporting parties, and by protestants representing Amarillo and Lubbock, Tex., interests. Replies to the exceptions were filed by the protestants barge lines and motor carriers, a protestant representing the port of Brownsville, Tex., protestants representing steel companies at East St. Louis, Ill., and Lone Star, Tex., and by the respondents. Exceptions and requested findings not specifically discussed herein nor reflected in our findings or conclusions have been considered and found not justified. The issues were argued orally before us.

The title proceeding concerns certain rail schedules which became effective on August 31, 1955, wherein the respondents[2] established reduced rail rates[3] on iron or steel pipe or tubing, in carloads, from points in western trunkline and official territories to points in the Southwest, principally Kansas, Oklahoma, and southwestern Missouri. In connection with these schedules, the respondents filed fourth-section application No. 30890 seeking relief from the long-and-short-haul provision of section 4 of the Interstate Commerce Act. Various water carriers, motor carriers, and others requested suspension of the proposed schedules and denial of the fourth-section application. Suspension was declined, but division 2, by order dated August 30, 1955, instituted this investigation into and concerning the lawfulness of those rates. The Commission's Fourth Section Board granted temporary fourth-section relief, pending hearing, by 22nd supplemental fourth section order No. 17160.

A petition was filed on behalf of several protestant barge lines requesting that we vacate the Board's order granting temporary fourth-section relief on the ground, among others, that the rates which the respondents were thereby permitted to establish are so low that they have in fact destroyed water-carrier competition in the transportation of pipe on the Missouri River to Kansas City, Mo., for ultimate delivery in Kansas, Oklahoma, and southwestern Missouri. To grant such relief, under these circumstances, they allege, is to ignore the criteria to be observed in

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[2] The term respondents also includes those who are applicants in the fourth-section applications.

[3] Unless otherwise indicated, rates, costs and charges are stated per 100 pounds and do not include the increases authorized in Ex Parte Nos. 196, and 206.

granting fourth-section relief as laid down in *Transcontinental Cases of 1922*, 74 I. C. C. 48, 71, wherein the Commission said, among other things, that the words "reasonably compensatory" as used in the administration of the fourth section of the act imply a rate not so low as to threaten the extinction of legitimate competition by water carriers. Replies to the petition were filed by the respondents and a supporting shipper. The issues raised by the petition are discussed more fully elsewhere in this report. In view of our conclusions herein, no action on this petition is necessary.

Investigation and Suspension Docket No. 6491 concerns certain rail schedules originally filed to become effective on October 26, 1955, wherein the respondents proposed to establish reduced rail rates on iron or steel pipe or tubing, in carloads, from points in western trunkline, official, and southern territories to points in southwestern territory. In connection with these latter schedules, the respondents filed fourth-section application No. 31120 seeking relief from the long-and-short-haul provisions of section 4 of the act. The protestants in the title proceeding, and others, requested suspension of these schedules also, and denial of the fourth-section application. By order of October 20, 1955, the proposed schedules were suspended to and including May 25, 1956, and this investigation was instituted into and concerning the lawfulness of the rates proposed.

On December 7, 1955, division 2, acting as an appellate division, vacated the order of October 20, 1955, as of December 17, 1955, insofar as it suspended the operation of the proposed schedules, but the investigation was continued in full force and effect. Temporary fourth-section relief, pending a hearing, also was granted by division 2 in 26th supplemental

fourth-section order No. 17160, dated December 16, 1955. The rates became effective on December 17, 1955. However, by Civil Action No. 9544, eight barge lines, together with the Waterways Freight Bureau, brought an action in the United States District Court for the Southern District of Texas, Houston Division, to set aside the foregoing orders of division 2 insofar as they vacated the suspension order and granted temporary fourth-section relief. By its decision of July 31, 1956, the court held the orders to be invalid. In purported conformity with the court decree, entered August 20, 1956, the respondents resuspended their proposed schedules and reestablished their former rates effective on August 29, 1956. The judgment of the District Court has been appealed to the Supreme Court of the United States.

At the time of the hearing herein all of the rates under investigation were in effect, and they will be referred to herein as the present rates. The respondents are rail carriers operating from western trunkline, official, and southern territories to the Southwest. Supporting the respondents are large steel companies, certain oil and pipeline companies, and the Beaumont, Tex., Chamber of Commerce. The protestants are the competing barge lines and coastwise ocean carriers, together with the southwestern motor carriers of oilfield equipment and supplies, port interests at Houston, Brownsville, and Corpus Christi, Tex., certain steel companies with plants at Lone Star and at St. Louis, Mo., and other interests at Oklahoma City, Okla., and Amarillo and Lubbock.

Rates to Kansas from western trunkline and official territories.—Prior to July 6, 1933, commodity or combination rates applied. In *Iron or Steel Pipe in Western Trunk-Line Territory,* 192 I. C. C. 745, a

rating on pipe, minimum 40,000 pounds, of 32.5 percent of the first-class rates as prescribed in *Western Trunk-Line Class Rates,* 164 I. C. C. 1, was found justified. Rates on that basis became effective on July 6, 1933. In *Iron and Steel to Iowa, Minn., Mich., and Wis.,* 263 I. C. C. 361, a rating of 28 percent of the same first-class rates was approved for application from official and western trunkline shipping points to destinations in Nebraska, and the same basis was voluntarily established to points in Kansas on and north of a line running through Paola, Ottawa, Emporia, Abilene, and Concordia. Fourth-section relief in connection therewith was granted by fourth-section order No. 15422.

In *Panhandle Eastern Pipe Line Co.* v. *Akron, C. & Y. R. Co.,* 289 I. C. C. 702, and *Coleman Co., Inc.,* v. *Akron, C. & Y. R. Co.,* 291 I. C. C. 260, rates were prescribed from producing points in western trunkline and official territories to Hugoton, Wichita, and Hutchinson, Kans., on the basis of 30 percent of the first-class rates prescribed in docket No. 28300, *Class Rate Investigation,* 1939, 281 I. C. C. 213. Later, the same basis was voluntarily established to various other points, and effective on September 10, 1955, a class-30 exceptions rating was established.

On April 10, 1955, an alternating lower scale of rates subject to a minimum of 70,000 pounds, as hereinafter described, was published to destinations in the Southwest beyond Kansas, and the Arkansas or Oklahoma border point rates were established as maxima at intermediate points in Kansas and Missouri. On August 31, 1955, rates subject to a minimum of 70,000 pounds were established from official and western trunkline producing points to docket No. 28300 base points in Kansas. These rates are embraced in the title proceeding. They purportedly reflect the barge-truck

costs over the port of Kansas City, observing certain minimum rates in order to minimize fourth-section departures and preserve the carriers' revenues to heavy pipe-consuming areas.

In general, the foregoing rates, other than those established on and after April 10, 1955, were subjected to increases authorized in the ex parte proceedings. In most instances percentage increases were established, but in Ex Parte No. 162 the maximum increase observed was 10 cents per 100 pounds, but not to exceed $2 per ton, net or gross as rated; and in Ex Parte No. 166 the maximum increase observed was 16 cents per 100 pounds. The maximum limitations had the effect of lowering the percentage relations to first class.

Rates within and to southwestern territory.—Prior to July 28, 1940, pipe to and within the Southwest moved on commodity rates. Traffic tests made for the year 1935 indicated that the average rates charged from official, western trunkline, and southeastern territories were about 30.3, 31.1, and 24.6 percent, respectively, of the first-class rates prescribed in *Consolidated Southwestern Cases,* 205 I. C. C. 601. In *Wrought Pipe and Fittings,* 234 I. C. C. 347, decided in 1939, the Commission prescribed a maximum reasonable basis of 32.5 percent of the same first-class rates, and suggested rates from the Pittsburgh, Pa., area to the Southwest to meet barge competition which average about 27.5 percent of first class. Thereafter the rail carriers established rates within and to the Southwest generally reflecting the 27.5 percent basis except that the western trunkline-southwestern border-point rates were observed as minima and the Texas common-point rates as maxima. Lower water-compelled rates to the Gulf Coast were retained. On December 10, 1955, rates from official territory to the

Southwest based on 30 percent of the docket No. 28300 first-class rates became effective. Publication of the same basis from western trunkline territory has been delayed because of fourth-section difficulties. The foregoing rates are subject to a minimum of 40,000 pounds.

Effective on April 10, 1955, a lower alternating scale of rates subject to a minimum of 70,000 pounds was established from western trunkline, official, and southern territories to the Southwest. To points on and east of a line running from Kiowa, Kans., to Laredo, Tex., the rates were made 20 percent lower than the then-existing 40,000-pound rates. To points west of that line the new 70,000-pound rates reflected the then-existing 40,000-pound rates exclusive of the Ex Parte No. 175 increase of 15 percent. Thus, the rates to points west of the line were about 87 percent of the 40,000-pound rates and the rates to points east of the line were 80 percent of the 40,000-pound rates.

Thereafter, on August 31, 1955, the 70,000-pound rates from Pittsburgh, Chicago, Ill., and St. Louis were reduced to the barge-truck combinations over Kansas City, Mo., as computed by the respondents, and related reductions were published from other origins. These are the rates under investigation in the title proceeding. On December 17, 1955, additional reductions were established from western trunkline, official, and southern territories to points in Arkansas, Louisiana, Missouri, Oklahoma, and Texas. These purportedly reflect barge-truck combinations from Pittsburgh, Chicago, and St. Louis over Mississippi River and Gulf ports to Docket No. 28300 base points, subject to certain minimum rates. Prior relations from other origins remained undisturbed. From Alabama City and Gadsden, Ala., the rates established were based on costs over rail-truck or rail-barge-

truck routes via Mississippi River and Gulf ports. To points other than docket No. 28300 basing points, the rates made effective on April 10, 1955 were canceled and the class-rate groupings established. These are the rates under investigation in Investigation and Suspension Docket No. 6491. Appendix A hereto shows representative rate changes since 1940 from Pittsburgh to Arkansas City, Kans., Oklahoma City, Dallas, and Houston.

Characteristics and tonnage of the commodity.—Oil country tubular goods consist of wrought iron and steel casing, drill pipe, tubing, and line pipe. Casing is used as a structural retainer for the walls of oil and gas wells to exclude undesirable fluids and to confine and conduct oil or gas from the productive subsurface strata to ground level. Tubing is used within the casing of oil wells to conduct oil to ground level. Drill pipe transmits power by rotary motion to the rotary drilling tool below the surface. Line pipe is used to construct pipe lines from the wells to the refineries and from the refineries to other destinations. Another pipe here involved is standard or merchant pipe which is purchased primarily by wholesale plumbing and heating-equipment distributors and is used for ordinary plumbing and heating purposes.

Wrought iron and steel pipe is readily adaptable to any form of transportation, and it can and usually does move in open-top equipment. Loss and damage claims are negligible. It can easily be stored or stock-piled, which is important in the competitive situations encountered, and permits barge shipments to points on the Missouri River during the open season of navigation for distribution in the winter months when the river is closed to navigation. The density of the pipe promotes heavy loading, usually in excess of 70,000 pounds in rail cars and 500 tons in barges.

Pipe moves in great volume from and to the points here concerned, particularly from official territory to the Southwest. For example, during 1955 volume of pipe moved from the official-territory plants of nine producers to the Southwest aggregated 2,041,467 tons. The pipe traffic of class I railroads from official territory to the Southwest in 1950 constituted about 32.4 percent of their tonnage and produced 26.7 percent of their revenue. In 1954 those percentages were 27.3 and 23.1 percent respectively. The total pipe tonnage of the protestant barge lines, most of which moved from official territory to the Southwest, constituted 3.75 percent of their tonnage and produced 7.3 percent of their revenue in 1950, and 9.67 and 17.38 percent respectively, in 1954.

Purpose of the proposed adjustment.—The alleged purpose of this rate adjustment by the rail lines is to recapture tonnage lost to barge and truck carriers, to prevent a further diversion of tonnage to such carriers, and to meet the competition of new producers at Minnequa, Colo., and Lone Star.

The major production area of pipe is in official territory, and the largest consuming area is in the Southwest. The following table shows the tonnage shipped during recent years over the all-rail routes and the barge or barge-truck routes, and the respective percentages, from the official-territory plants of nine producers to the Southwest:

Year	Total tons shipped	Rail		Barge or barge-truck	
		Tons shipped	Percent	Tons shipped	Percent
1951	1,684,996	1,507,049	89.3	177,947	10.7
1952	1,504,172	1,350,279	89.7	153,893	10.3
1953	1,905,446	1,421,834	74.6	484,612	25.5
1954	1,694,738	1,012,034	59.7	682,704	40.3
1955	2,041,467	906,242	44.4	1,135,225	55.6
1956	1,943,926	1,209,480	62.2	734,446	37.8

The trend of the traffic from the rail to the barge routes convinced the respondents that their rates were no longer competitive with the barge or the barge-truck rates and that the reduced rates here under investigation were necessary to meet the competition. This trend to the barge routes was not limited to shipments originating at plants on the waterways, but occurred also on shipments from so-called landlocked plants. The number of carloads of wrought iron pipe transferred to barges at river points in the Pittsburgh area increased from 1,371 in 1947 to 9,304 in the first 10 months of 1955.

The experience of the Youngstown Sheet and Tube Company is cited as representative. During 1952, it shipped 315,150 tons of pipe from Youngstown to the Southwest, 85.6 percent by rail and 14.4 percent by barge. In 1955, it shipped 306,652 tons of pipe to the same area, of which 39.8 percent moved by rail and 60.2 percent by barge. This diversionary trend was alarming to the respondents, not only because of the immediate diversion of traffic, but also because of a threatened change in the location of some inland industries to sites from which barge service would be directly available. This shipper is considering expansion of its pipe-producing facilities, and states that unless all-rail rates are provided from Youngstown that are competitive with transportation costs from the Pittsburgh area mills, which have barge service, its future expansion will not be at Youngstown but at Indiana Harbor, Ind., where barge service is available. In order to be competitive with the Pittsburgh area producers, this company has been absorbing the cost of transporting pipe by rail from Youngstown to the Ohio River, as well as the terminal cost for loading the barges.

The pipe tonnage and revenue of the barge lines, most of which is from and to the points here concerned, in relation to their total tonnage and revenue, increased, respectively, from 3.09 and 5.71 percent in 1952 to 9.67 and 17.38 percent in 1954.

Compensatory nature of the rates.—The respondents submit many comparisons of representative minimum earnings under the present 40,000-pound and 70,000-pound rates, and rates based on the classification basis of class 35, minimum 40,000 pounds. For example, from Pittsburgh to Great Bend, 1,106 miles over a route of The Pennsylvania Railroad Company to St. Louis and the Missouri Pacific Railroad Company to destination, the rate of 87 cents for the minimum of 70,000 pounds yields $609 per car, 51.4 cents a car-mile, and 14.7 mills a ton-mile. The rate of 128 cents for the minimum of 40,000 pounds yields $512 per car, 43.2 cents a car-mile, and 21.6 mills a ton-mile, and the class-35 rate from and to these points of 150 cents, minimum 40,000 pounds, yields $600, 50.6 cents, and 25.3 mills, respectively. In general, the minimum yields of the rates under investigation, per car and per car-mile, are substantially in excess of those of the commodity rates, minimum 40,000 pounds, and approximately the same as, or higher than the class-35 basis.

Based upon rail tonnage handled in 1954, the revenue under the present rates would amount to $27,127,644. The out-of-pocket costs on this traffic, as computed by the protestants, would be $17,348,679, and the fully distributed costs, as computed by the respondents from the work papers of the protestants' witness, would be $25,587,907. Inasmuch as the present adjustment produces revenues almost $10 million in excess of out-of-pocket costs and $2 million

in excess of the fully-distributed costs, it appears that the adjustment, as a whole, is compensatory.

Competition between the steel companies.—The various steel companies in official territory strongly support the respondents and insist that the rate adjustment is necessary for them to effectively compete in the Southwest, not only with the Lone Star Steel Company at Lone Star, and the Colorado Fuel & Iron Company at Minnequa, which are closer to the destination area, but also with each other. The intensity of the competition is such that no producer can market its product at any greater laid-down cost in the Southwest than that charged by competing producers. Thus, the Youngstown and Lorain plants, which have no water service available therefrom, in order to compete with the Pittsburgh producers, who do have barge service available, must ship their pipe by rail to the river ports of Conway or Monaca, Pa., a distance of about 42 miles from Youngstown and 135 miles from Lorain, and absorb the rail charges to the river.

The Bethlehem Steel Company produces wrought iron and steel pipe at its plant at Sparrows Point, Md., and must meet the competition of plants in the Pittsburgh area, which are closer to the Southwest and enjoy lower rates. This party insists that it must have available rail rates that are reasonably related to those applicable from its competitors' plants if it is to share in the business. Under the present adjustment the rates from producing points east of Pittsburgh reflect the same differences over Pittsburgh as did the rates established on April 10, 1955, and the rate relations approximate those which have been maintained throughout the period since the basic 40,000-pound rates were established in 1940.

In addition to the intense laid-down price competition, there is competition in service reflected in the time of transit and ability to furnish the type and specific quantity of pipe required, particularly as between the more distant northern and eastern producers and the closer southwestern producers. The Lone Star Steel Company, for example, can and does provide delivery by truck to sites up to 400 miles from its plant at Lone Star within 24 hours. Confronted with this service disability, the northern and eastern mills established stock piles of pipe at various ports and points in the Southwest, including Houston, Corpus Cristi, Vidalia, La., Memphis, Tenn., and Kansas City. This method of assembling ex-barge pipe stocks at gateway ports in the Southwest has been increasingly utilized by the major oil companies as a saving in transportation cost and efficiency in operation.

Barge-line protestants' investment.—The barge-line protestants have substantial investments in equipment and property which they claim will be destroyed if the respondents are allowed to establish and maintain rates such as those here under investigation. For example, in 1954, the American Barge Line Company owned floating equipment valued at over $10 million, the Mississippi Valley Barge Line Company had a net property value of almost $20 million, and the Union Barge Line Corporation had an investment in floating equipment of about $14 million. The record does not disclose the value of the investments held by other barge lines concerned, including Coyle Lines, Inc., Dixie Carriers, Inc., Federal Barge Lines, Inc., Sioux City and New Orleans Barge Lines, Inc., John I. Hay Company, and Gulf Canal Lines, but they are substantial.

Additional costs over barge-line routes.—As indicated, the respondents established all-rail rates which

were, in general, based on the corresponding barge-truck combinations. The protestants insist that certain other cost factors in connection with the barge-truck routes also should have been considered. Much of the pipe shipped by barge into the Southwest is produced at mills located off the water and shipments therefrom are subject to additional expenses for transportation to the ports and for loading the barges. During the first 10 months of 1955, 961,896 tons of pipe were shipped by barge from the Pittsburgh area, of which 487,784 tons, or 50.7 percent, incurred weighted-average costs for transportation to the port and for transfer to barges of 17.25 cents or $3.45 per ton. During the same period, 139,261 tons were shipped by barge from the Chicago area, of which 77,324 tons, or 55.6 percent, incurred weighted-average costs for transportation to the port and transfer to barges of 19.6 cents or $3.92 per ton. Pipe shipped from Youngstown and Lorain, for example, is subject to costs of $2.60 and $4.20 per ton, respectively, for the rail haul to the port, plus a loading charge of $1 per ton. Also, it appears that no mill is so situated that pipe may be loaded direct from the point of manufacture. It must first be moved to a dock, generally in a rail car. Additionally, barges are sometimes shifted from one loading point to another to complete loading, at additional expense.

From the Chicago area the principal shipper has been Republic Steel, which has access to barges at its South Chicago plant. To reach the barge the pipe is hauled by straddle trucks about 1 mile, or it is loaded in a rail car and switched to the dock at a cost of $7.13 per car. No estimate of the cost of the straddle-truck movement is shown. The barges are then loaded with the use of cranes owned and oper-

ated by the shipper. John I. Hay Company, a barge-line protestant, operates similar cranes at its public docks, and its charge for loading pipe is 90 cents a ton. A few shipments are made from Gary, Ind., and Indiana Harbor. From these points a switch move is required at a charge of $1.60 a ton, plus a loading charge of 90 cents a ton. From Milwaukee, during the first 10 months of 1955, more than 54,000 tons were shipped by barge. That pipe was moved in rail line-haul service to Chicago or Joliet, Ill., and the present rate therefor is $3.40 per ton, to which must be added the loading charge at Chicago or Joliet of 90 cents a ton.

The foregoing charges or costs were not considered by the respondents in setting up their all-rail rates. Generally, these charges are borne by the manufacturers, which normally sell their pipe f. o. b. barge or rail origin, and thus, the respondents regard them as outside the competitive scope of the rates in that the consumer is interested only in the respective charges beyond the loading points. However, the Milwaukee shipper does not absorb the charge to the port in that its pipe generally is sold f. o. b. mill. The type of pipe manufactured at Milwaukee is not produced by mills in the Chicago area and competition is primarily with mills in the Pittsburgh area.

It appears also that no consideration was given, in constructing these rail rates, to a charge imposed at the principal destination ports for transfer of the pipe from barge to storage for later movement beyond by truck. The respondents state that much of the traffic moves through the ports without going into storage, and that, in any event, the charge, generally $1.30 a ton, is often absorbed by the outbound motor carriers. The record does not indicate how much of the pipe moves through the ports without storage, but appar-

ently the tonnage is quite substantial. Witnesses for the steel companies acknowedge that frequently a charge was incurred by them on their shipments stored at the ports. For example, Republic Steel paid the $1.30 transfer charge at Houston and Vidalia. It also paid $1.45 per ton for unloading at Kansas City, plus a truck-loading charge of $1.40 per ton, and also $3.36 per ton for transfer to storage at Harvey, La. The barge-truck combinations over Kansas City used as basis for all-rail rates, however, do include a terminal charge of $1.45.

The protestants point out that the inventories maintained at the ports also represent a cost item incurred on barge shipments. Prices at the port stock piles are generally 4 percent higher than the Pittsburgh base price, plus the barge transportation costs. Thus, on oil country pipe which is valued at present at about $180 per ton at Pittsburgh, the price at the stock pile, not including the transportation charge, would be about $7.20 per ton higher, which amount the protestants believe represents the cost of establishing and maintaining the inventory.

Additional costs via all-rail routes.—As stated, the rates under investigation in general are alleged by the respondents to be equal to the barge-truck combinations to the southwestern rail heads. However, the respondents urge that much storage yard is under the control of the operator thereof, who can by such choice of location control or eliminate the cost of the delivery expense; in other words, that any expense for transportation from a rail head to a storage yard, if there be any, is not an essential expense and should not be included in a comparison of transportation costs over the rail route with those over the barge-truck routes. The record is indefinite as to the volume of the traffic delivered to points either on or off the rail heads.

The protestants also challenge the statement by a representative of the Philips Petroleum Company that its unloading costs would average about 10 cents. One of the principal trucking companies of pipe has a tariff charge of $1 per ton for unloading pipe from a rail car, and the cost data of certain other parties supporting the respondents indicate that their unloading costs are about 5 cents or less.

Effect of reduced rail rates on barge operations up the Missouri River.—As above shown, the present rates to Kansas, Oklahoma, and southwestern Missouri, which were based on barge-truck combinations over Kansas City, were established on August 31, 1955, and other rates in issue were established on December 17, 1955, but were resuspended on August 29, 1956. At the hearing in March 1956, the protestants submitted evidence concerning the effect of the rail reduction to Kansas, Oklahoma, and southwestern Missouri on barge operations up the Missouri River.

Early in 1955, a pipe terminal and storage yard was opened at Kansas City by the Kansas City Dock and Storage Company, and another was opened by an individual at Pomeroy Bend, Kans., which is on the Missouri River near Kansas City. During 1955, the terminal at Kansas City handled 49,347 tons and that at Pomeroy Bend 32,109 tons of pipe. In addition, Kansas City had available two other terminals with limited facilities, one of which handled 11,649 tons and the other about 300 tons of pipe. Barge traffic on the Missouri River is suspended during the winter months and the last shipment in 1955 arrived late in October. The respondents point out that barge shipments continued to move after August 31, the date the reduced rates became effective, but the protestants assert that pipe manufacturers and supply companies who were maintaining storage stocks at Kansas City

could not immediately accomplish a reversal of the distribution methods used, and that barge shipments arriving after that date were largely to fulfill commitments made previously.

Prior to March 1956, the operator of the Kansas City Dock and Storage Company made inquiries of his customers concerning their plans for barge shipments to his terminal in 1956 and was informed that they had no plans for barge shipments thereto. The steel companies and supply companies with which he had contracts in 1955 had closed out all of their stocks. As a result the terminal was closed, the personnel was laid off, and the equipment was turned back to the lessors. The operator of the yard at Pomeroy Bend made like inquiries of his customers and found that none had any program with respect to barge shipments on the Missouri River in 1956.

In the barge industry it is the practice to book barges in advance, and in 1955 The Sioux City and New Orleans barge line had requests for barges for pipe loadings to the Missouri River as early as the middle of February. In 1956, up to the time of the hearing, no such requests had been received, and neither that line nor Federal Barge Lines had been able to secure a single booking of pipe to the Missouri River for 1956. Solicitation efforts all indicated that shipments during the year would be given to the rail carriers. Certain steel companies supporting the respondents admitted that none of the tonnages booked for 1956 had been scheduled for barge movement through Kansas City. Only 3,302 tons of pipe were handled by barge on the Missouri River in that year. The conclusion is warranted that establishment of the present rail rates to points in Kansas, Oklahoma, and southwestern Missouri effectively resulted in the

elimination of substantially all of the barge-truck shipments to such points.

Competition with ocean routes.—From points east of Pittsburgh such as Chester and Fairless, Pa., Claymont, Del., and Sparrows Point, the rail-ocean-rail rates have long been lower than the all-rail rates. However, the all-rail rates established on December 17, 1955, under investigation here, were constructed with relation to the reduced rates established from Pittsburgh and are now generally lower than those over the coastwise routes. For example, from Sparrows Point to Alice, Tex., the all-rail rate was reduced from 138 to 85 cents. The rail-ocean-rail rates remained at $1.03. Thus, the 35-cent difference in favor of the coastwise route was changed to an 18-cent difference in favor of the all-rail route. The coastwise lines have enjoyed a regular movement of pipe from eastern origins to the Southwest and during 1955 handled the equivalent of more than 250 carloads. They insist that the rates established on December 17, 1955, would divert to the rail lines all of the pipe traffic normally handled by the coastwise lines. However, the respondents have offered to join with the coastwise carriers in corresponding reductions in the rail-ocean-rail rates.

The southwestern trucking companies.—There are about 300 trucking companies in the Southwest which specialize in the hauling of pipe and other oil-field supplies and equipment. About 90 percent of their traffic consists of pipe. These protestants estimate that they would lose about $12 million in revenue annually if the rail rate reduction is 100 percent effective in diverting the traffic to the rail lines. In general, the operating ratio of this industry is over 95 percent and the hauling of pipe is vital to their continued operation. One witness testified that the

motor carriers were in need of an upward revision of their rates to compensate for increased costs, that his company and others have been attempting to have the industry raise its rates, but that in the face of the reduced rail rates no increase would be possible. An investigation was instituted by the Commission on November 21, 1955, into the lawfulness of the rates, charges, rules, regulations, and practices maintained by motor common carriers transporting oilfield equipment, materials, and supplies, including pipe, from, to, and between points within an area embracing 10 western and southwestern States, including the destination States involved in the instant proceeding. In a report therein, *Oilfield Equipment To And Between The Southwest,* M. C. C. —, decided on April 24, 1957, the Commission found, among other things, that rates on oil country pipe maintained by many such motor carriers are unjust and unreasonable to the extent they are lower than a minimum reasonable basis therein prescribed. As stated, the respondents before us here expressed their purpose to be to meet the lowest level of competitive barge-truck rates. Apparently, the truck components of these rates, for the most part, are the rates found to be depressed in the motor-carrier investigation. Also, in constructing the rates here under investigation, the respondents failed to take into consideration, in many instances, the cost of transferring pipe from barge to truck based on their belief that such charges are generally absorbed by the motor carriers. Such absorptions by motor carriers were found, in the motor-carrier investigation, to be unlawful.

Port interests.—The ports of Brownsville and Corpus Christi and a terminal operator at Kansas City oppose these rates in that they are fearful of a diversion of the traffic to the rail lines, with a con-

sequent loss of traffic to the terminals. Large capital sums have been invested in these facilities, which are dependent upon water-borne traffic. The Kansas City terminal operator apparently is dependent wholly upon barge pipe traffic and as indicated at the time of the hearing in March 1956, his yard was closed because of lack of business, and no business was expected so long as the present rate situation remained.

Western steel companies.—On behalf of the Lone Star Steel Company, it is alleged that the rate adjustment here in issue is unduly preferential of northern and eastern producers and unduly prejudicial to the western producers. This company manufactures only certain grades of oil country pipe, and its f. o. b. mill price is $10 a ton higher than the Pittsburgh base price. Thus, in those instances where the Lone Star mill can provide a lower laid-down cost on pipe, it comes about by reason of the geographical location of its plant closer to the point of consumption.

Effective on April 30, 1956, the respondents established reduced rates from Lone Star to points in Kansas on the basis of class 30, minimum 40,000 pounds. The rates here in issue from the eastern steel plants, however, are in many instances as low as 20 percent, and in some instances 16 percent, of first class. For example, from Lone Star to Great Bend, 561 miles, the class-30 rate is 86 cents; the rate here in issue from the Pittsburgh area, including Youngstown, to Great Bend is 87 cents. From Youngstown to Great Bend, 1,063 miles, the class-30 rate is 124 cents. To Kansas City, 544 miles from Lone Star and 809 miles from Youngstown, the rates are 85 cents from Lone Star and 71 cents from Youngstown. If the class-30 basis were applied from Youngstown, the rate therefrom would be 107

cents. To many points in Oklahoma and Louisiana, the rates from Lone Star are lower than those from the Pittsburgh area because of the difference in distance, but the rates from Youngstown are in some instances as low as 16 percent of first class. For example, to Morgan City from Lone Star, 352 miles, the rate is 64 cents, whereas from Youngstown, 1,212 miles, the rate is 70 cents, or 16 percent of first class. The same situation exists with respect to many destinations in Texas.

Transit—Oklahoma City versus Houston.—The American Iron and Machine Works Company, of Oklahoma City, a protestant herein, is a manufacturer of rotary drilling tools. These tools are made from drill pipe to which a tool joint is attached. The tool joints are manufactured from forgings. This protestant receives its drill pipe by rail from the Pittsburgh area and its forgings from Bethlehem, Pa. The greatest oil and gas drilling activity at present is along the Texas and Louisiana Gulf coast, and the protestant's principal market is in that area. Its chief competitor has its plant at Houston.

The protestant's difficulty arises from the application of transit arrangements which permit transit on both drill pipe and forgings, but require application of the rate from origin to transit point when higher than the rate from origin to destination. The rate on drill pipe from the Pittsburgh area to Oklahoma City is 103 cents. The rates from the same area to points in Texas and Louisiana, in an area within about 300 miles from Houston, are lower than those to Oklahoma City, so that the Oklahoma City rate of 103 cents applies on shipments to these points when stopped at Oklahoma City. However, from Pittsburgh to Houston the rate, established on December 17, 1955, is only 70 cents. As the through rates to the

foregoing area are the same or higher than the rate to Houston no adjustment of the through rate is necessary on shipments transited at Houston. For example, to Beaumont the through rate is 70 cents, and shipments may be routed through both Oklahoma City and Houston. On a shipment stopped for transit at Houston the through rate of 70 cents would apply, whereas on a shipment stopped for transit at Oklahoma City the through rate would become 103 cents, even though the service performed in either instance would be almost the same. Because of liberal backhaul arrangements the fabricator at Houston also can ship to a point such as Longview, Tex., at the basic through rate, in this instance 88 cents, whereas the Oklahoma City fabricator would be subjected to rate of 103 cents even though the haul would be 369 miles shorter.

The Oklahoma City protestant alleges that the foregoing illustrations clearly show that the rates under investigation are unjustly discriminatory and give undue preference to the Houston fabricator. It does not assail the through rates as such but seeks a waiver of the rule which requires adjustment of the through rate when lower than the rate to the transit point. The protestant urges that relief from the long-and-short-haul clause of section 4 here sought should not be granted where, as in this instance, it would result in unjust discrimination and undue preference and prejudice.

Standard or merchant pipe.—Another protestant, the Laclede Steel Company, with its plant near Alton, Ill., in the St. Louis district, is engaged in the manufacture of buttweld pipe, 4 inches or less in diameter, which is generally referred to as standard or merchant pipe, and is used for the conveyance of gases, liquids, or steam under low pressure. The pipe is unlike oil-

field country pipe and line pipe in that it generally is purchased by and delivered to wholesale plumbing and heating distributors in the cities and the movement is usually by rail or truck. Only incidental movements have been handled by barge. For example, during 1955 the barge lines handled 90,694 tons of pipe to Kansas City of which only 312 tons consisted of merchant pipe.

Because the rate adjustment here in issue was made to apply on merchant pipe, as well as on oil country goods, and consisted of reductions that were greater from the plants of the protestant's competitors located in the Chicago, Pittsburgh, and related areas than they were from the protestant's plant in the St. Louis area. The protestant alleges that such rates are unduly preferential of its competitors and unduly prejudicial to itself. It urges that the relation of the rates on merchant pipe from its mill and those of its competitors should not be controlled by the character of the competition confronting the rail lines in the transportation of oilfield country pipe.

Historically, the price of merchant pipe at the Chicago area mills has been 10 cents, and that at the Pittsburgh area mills 20 cents, under that at the protestant's Alton mill. Prior to the present rate adjustment, the protestant had been afforded the benefit of its geographical location on shipments to the Southwest, and it had a rate advantage which overcame the disadvantage of its higher origin price. Under the present adjustment the rate advantage is largely destroyed. For example, to Little Rock, Ark., the rates in effect prior to December 17, 1955, from St. Louis, Chicago, and Pittsburgh were 60, 80, and 91 cents, respectively. Taking into consideration the differences in the origin price, the protestant had a delivered price advantage of 10 cents under Chicago

and 11 cents under Pittsburgh. Effective on December 17, 1955, however, the respective rates from St. Louis, Chicago, and Pittsburgh became 56, 62, and 70 cents. Thereafter, the Chicago and Pittsburgh producers had a delivered price advantage over the protestant of 4 and 6 cents respectively. Similar illustrations are shown to points in Oklahoma, Kansas, Louisiana, and Texas. The Protestant argues that competition for the transportation of oilfield country goods should not be allowed to destroy its natural and normal advantage in the sale of merchant pipe in southwestern markets.

The respondents urge that merchant pipe is moved to the southwestern oil fields and that the inclusion of this commodity in the adjustment was proper. However, the record contains only incidental references to the production and movement of merchant pipe, and there is no indication of any substantial movement thereof by barge. On the contrary, the record is quite clear that the transportation of merchant pipe is not subject to the same competitive conditions as oilfield country goods, in that it does not move in comparable volume and the delivery points are substantially different.

Amarillo and Lubbock interests.—As indicated, the respondents established a new scale of rates on pipe, minimum 70,000 pounds, on April 10, 1955, to alternate with the existing rates, minimum 40,000 pounds. That adjustment was protested, but the Commission declined to suspend or investigate such rates and consequently they are not in issue here. The 70,000 pound rates to points west of a line running from Kiowa to Laredo, which includes Amarillo and Lubbock, were made on a higher basis than those to points east of that line on the theory that barge-truck competition to points west of the line was not as intense

as that to points east thereof. Subsequently, reductions established on December 17, 1955, which were based on the barge-truck combinations over the Gulf ports, gave no reduction to Amarillo and Lubbock but in many instances made additional reductions to points in Texas generally east of the foregoing line. Thus, Amarillo and Lubbock are on a rate plateau which has narrowed the markets of their distributors and broadened the markets of distributors located at such points as Houston and Fort Worth.

For example, prior to the April 10 adjustment the rates from Pittsburgh to Wichita Falls, Tex., and Lubbock were $28 and $30.40 a net ton, respectively, a spread of $2.40. The present spread, Wichita Falls under Lubbock, is $4. Amarillo and Lubbock interests fear that the greater reductions to their competitors east of the line will seriously reduce the carriers' earnings and that the higher earnings on traffic to Lubbock and Amarillo will be used to offset these losses. The minimum car-mile yield, Pittsburgh to Lubbock, 1,494 miles, is 61.85 cents, while to Wichita Falls, 1,307 miles, it is 59.98 cents. These protestants allege that the rates under investigation are unduly preferential of points such as those mentioned and unduly prejudicial to Amarillo and Lubbock.

Effect of rate adjustments on revenues of rail carriers and barge lines.—An experienced traffic consultant was employed by the protestant barge lines to make studies of the revenue effect of the present rate adjustment. He concluded that the reductions made by the respondents in 1955, as applied to traffic handled in 1954, would result in a reduction in gross revenues annually of $11,692,456, and that the respondents, in order to overcome this reduction would have to increase their volume of pipe traffic by 638,867 tons. He also computed that the 1954 rates and ton-

nage resulted in a contribution to overhead of $21,471,421, whereas at the present rates the contribution to overhead would have been only $9,778,965. The additional traffic required to make the same contribution to overhead would be 2,059,700 tons. The barge lines operating on the Mississippi River System and the Gulf Intracoastal Waterways originated, during 1954, 1,380,337, tons of pipe so that according to this study, if all of the traffic were diverted to the rail lines the contribution to overhead would still be less than that received in 1954.

A separate analysis was made of the adjustment to Kansas and Oklahoma. In 1954, the rail rates and tonnage resulted in revenues which provided a contribution over out-of-pocket cost of almost $9 million. If the 1955 barge line traffic were subtracted the contribution to overhead would have been reduced to about $6 million. But if the present rates had applied to the 1954 tonnage the contribution to overhead would have been under $4 million. In other words the protestants aver that the respondents are willing to sacrifice more than $2 million a year in order to destroy the barge-line competition.

The respondents offered no challenge to the foregoing computations but merely pointed out they are based on the fallacious assumption that the respondents would continue to handle their 1954 or 1955 volumes of traffic. The protestants' own figures indicate that the present rates are compensatory and result in a contribution to revenue which the respondents believe would be lost if the former rates were retained.

Another study was made which indicates that iron and steel pipe traffic contributes from 17 to 32 percent of the total revenues of the principal barge lines, but contributes only 1 percent of the total revenue of all

class-I railroads. While it is not denied that pipe constitutes an important source of revenue to the barge lines, a more helpful showing was made by the respondents wherein they disclosed that on rail traffic from official territory to the Southwest the pipe tonnage contributed 26.7 percent of the total revenue in 1950 and 23.1 percent of the total revenue in 1954.

Federal Barge Lines carload rates.—For many years the Federal Barge Lines, or its predecessors, together with the rail lines, have maintained through routes and joint rates on pipe and other commodities, in carload lots, differentially related to the all-rail rates. In Ex Parte No. 96, *Through Routes and Joint Rates,* 153 I. C. C. 129, and later reports, the Commission prescribed a formula whereby minimum differentials were required, subject to a proviso that lesser differentials could be established by agreement of the parties.

The operations of this barge line were originally confined to carload business. This business expanded to its peak in 1938, when about 1,000,000 tons were handled. About that time other barge lines began to develop in size and to concentrate on bargeload service. There has since been a trend in the traffic from carload to bargeload lots. This line also developed bargeload service, and the carload freight presently handled by Federal has diminished to less than 20 percent of its total traffic. The number of tons of pipe in carloads handled by it declined from 5,939 in 1953 to 1,697 tons in 1954. Practically all of the carload shipments were to hardware companies, plumbing supply companies, and similar jobbers who handle merchant pipe.

Except for the fact that the differentials were voluntarily narrowed in 1952, differential rates under the formula prescribed in Ex Parte No. 96 have been

maintained on rates subject to a minimum of 46,000 pounds. However, on April 10, 1955, the rail carriers established lower rates subject to a minimum of 70,000 pounds. Nor were differentials for the barge routes provided in the later adjustments here under consideration. For example, from the Pittsburgh area to the Houston group the respective rates prior to April 10, 1955, were 130 cents all-rail and 124 cents rail-barge-rail. On that date the all-rail rate established was 104 cents and on December 17, 1955, it was further reduced to 70 cents. Basically, the same situation exists with respect to all other rates here concerned.

This protestant contends, not only that the all-rail rates are in violation of the Commission's order in Ex Parte No. 96, but that they are unduly prejudicial to it, in violation of section 304 of the act. Attention is directed to the decision of the Supreme Court in *Dixie Carriers* v. *United States*, 351 U. S. 56, wherein the court held that where there is discrimination by the use of a joint rate to favor rail carriers over water carriers and to deprive the latter of their "inherent advantages", it is the duty of the Commission to end it under section 307 (d) of the act.

The respondents deny that the order in Ex Parte No. 96 is still effective. In view of the findings hereinafter, it is not necessary to resolve this issue.

Discussion and conclusions.—The principal issue here concerns the need of the respondents for reduced rates on oilfield country pipe, including line pipe, to meet the competition of combination barge-truck rates and service from and to the same points. That the respondents' former rates on this important segment of traffic were not adequately competitive is firmly established by this record, which shows a diversion of much of the traffic to the barge and barge-truck

routes. There remains, however, the question of the level of the rates necessary to meet such competition, and various other collateral matters.

Because of the vast scope of this adjustment and the many different situations encountered, it is not practicable to compare specific movements and the various disabilities or advantages attendant upon each. Instead, general overall comparisons must be made.

Two basic transportation characteristics which are fundamentally different in barge and rail service are the minimum loading requirements and the transit time. Barge shipments must be loaded to a minimum of 500 tons, whereas the rail minimum is only 35 tons. The transit times vary with the movements, but in general the transit time over the barge routes is substantially greater than that over the corresponding rail routes. The respondents do not concede that the differences in the barge and rail services warrant any differential rate treatment, because many receivers of pipe are readily able to receive and accumulate bargeload lots of pipe, and because storage stocks of pipe are sometimes maintained in the destination area to satisfy the need for expeditious delivery service. However, the protestant barge lines insist, and some shippers admit, that traffic will not move by the barge route except under differential rates. On this record it is impossible to measure with any degree of accuracy the difference in the value of the service over the respective routes, but it is apparent that the difference is material and should receive consideration.

As indicated, certain producers have no direct access to water service and are subjected to additional costs incidental to the transportation to and the loading of barges from their plants. The respondents consider all costs which are incidental to the barge loadings as outside the competitive scope of the re-

spective rates in that the consignee, who pays the freight, is interested only in the charges beyond the loading points. But this record is not convincing that the producers who would bear these incidental costs would have no influence in the routing so as to avoid such expenses. Moreover, the large steel companies have adopted the practice of maintaining storage stocks in the Southwest from which they sell their pipe, and the shipments to such storage piles are controlled by the producer. For example, the Youngstown Sheet & Tube Company would not be apt to ship by barge to and through a storage yard at a Gulf port when it could ship by rail direct to destination at the same rate without incurring the cost of the movement to the barge or the barge loading charge. In addition, the record reveals a shipper at Milwaukee who does not absorb the cost of transferring shipments from its plant to barge at Chicago and Joliet. When consideration is given to the over-all situation, it is apparent that the costs incidental to barge loadings are a material factor to be considered.

Another cost incidental to barge-truck movement is the transfer charge at the destination port. The respondents apparently constructed their all-rail rates on the belief that transfer charges at the ports were generally absorbed by the motor carriers, and that some shipments move directly through the ports and do not incur the charge. But, other than the testimony of one shipper that about 50 percent of its shipments moving through Houston in January 1956, did not incur the charge there is little evidence of record to establish that such charge is not generally incurred. On the contrary several shipper witnesses supporting the respondents readily admitted that such charges were being incurred, and as seen, absorption of such charges by the motor carriers was found to be unlaw-

ful in *Oilfield Equipment To And Between the Southwest, Supra.* In their exceptions, the respondents argue that barge truck service without storage is available and alone necessitates this competitive level of rail rates. In a particular situation this might be true. But where, as here, an extensive adjustment of rates is under consideration all factors must be viewed in their proper perspective to the whole, and we cannot ignore the fact that barge traffic generally is stored at the ports and is subject to additional charges therefore. These factors should have been given some consideration in the establishment of the all-rail rates.

On the other hand, the respondents contend that rail shipments are subject to a cost disability of about $4.82 per ton for the added expense of unloading rail cars and moving the tonnage from the rail heads to the job sites or storage yards; and to a service disability in that truck deliveries from port stock piles can be made more expeditiously than rail shipments from producing points in the East. The alleged cost disability of $4.82 per ton is based on a composite average of the added costs on about 4,000 tons of pipe shipped to four oil companies out of the more than 1 million tons shipped by rail each year into the Southwest. We are not convinced that the shipments submitted were representative of the whole. However, this does not alter the fact that the respondents are subject to some disability in this respect which must be given consideration.

With respect to the alleged rail service disability, there can be no question but that it is advantageous to receivers of pipe to receive expedited delivery from port stock piles. As previously indicated, however, the price of pipe at the port stock piles is subject to a markup, at the time of the hearing about $7.20 per

ton, and it seems apparent that the more expeditious delivery is offset to some extent by the added expense incurred. Furthermore, as the overall supply of pipe is often short there is no reason to assume that adequate supplies can always be maintained at the port stock piles. An overall comparison of the two types of service and all of the advantages and disadvantages attendant on each leads to the conclusion that the disabilities present in the barge-truck service outweigh those present in the all-rail service, and are persuasive that the rates here under investigation are lower than necessary to afford the respondents a fair opportunity to compete for the traffic. The discontinuance of barge-truck service via Kansas City after these rates were established strongly supports this conclusion.

The respondents and supporting parties also allege that these rates are necessary to permit the northern and eastern producers to meet the competition of western steel companies. To the contrary, however, the evidence of the Lone Star Steel Company indicates that the rates are unduly preferential of the northern and eastern producers and unduly prejudicial to the western producers. It is clear that the rates under investigation have the effect of depriving the Lone Star producer of the benefits of its geographical location and give an undue advantage to its more distant competitors. One of the principal purposes of section 3 (1) of the act was to eliminate favoritism among competitors. If carriers elect to establish rates to enable some shippers to meet commercial competition in particular markets, they must afford all shippers, similarly situated, an equal opportunity. The failure of the respondents to afford the Lone Star producer rates to the southwestern markets on the same relative basis as those afforded

similarly landlocked producers in the East does not contravene section 3 of the act, as alleged, inasmuch as the record indicates that the eastern landlocked producers do nevertheless ship by barge while the Lone Star producer does not, and hence transportation conditions are dissimilar. However, to the extent that the proposed rates from these origins are lower than necessary to meet the competition of the barges and barge-truck lines to the points served by these producers and the producer at Lone Star, such rates unduly prefer these eastern producers and unduly prejudice the Lone Star producer, and constitute the undue preference and prejudice prohibited by the act. A like conclusion is reached with respect to the publication of the proposed rates from the eastern origins to points in Texas and Louisiana, in that such rates, to the extent that they are lower than necessary to meet barge or barge-truck competition, unduly prejudice the Oklahoma City protestant and unduly prefer fabricators at Houston and elsewhere, as previously described.

A somewhat similar situation exists as to the application of these rates to standard or merchant pipe. No need for a reduction in the rates on this product has been shown to meet either commercial or carrier competition. On the other hand, the protestant at St. Louis has shown that existing relations in the rates on this product would be seriously disrupted with effects prejudicial to it and preferential of Chicago and Pittsburgh producers. Federal Barge Lines also has been handling merchant pipe in carload lots under joint rail-barge rates differentially related to the all-rail rates, and in this adjustment the respondents have totally ignored the protestants' right to such differential rates. In the absence of a positive showing of a competitive need for these reduced rates

on merchant pipe, what we have said with respect to the rates from Lone Star applies with equal vigor to the rates from the St. Louis area, and warrants the conclusion that the rates are unduly prejudicial to the producer at that point and unduly preferential of its eastern competitors.

It is conceded by the respondents that the coastwise carriers are entitled to a differential in their rail-ocean-rail rates from the East to the Southwest in that they now have offered to join with such carriers in corresponding reductions. In view of our conclusions no specific finding is necessary on this issue. If in the future a downward revision of the rail rates is proposed, then respondent should join with the coastwise carriers in establishing rates resulting from the motor carrier investigation above referred to. The responsibility for the establishment of a properly related adjustment, which will be fair and just to all modes of transportation concerned, and which will avoid the unlawfulness in the present adjustment above indicated, rests upon the carriers themselves. Accordingly, our findings herein are without prejudice to the filing of new schedules not inconsistent with our conclusions herein.

We find that the rates here under investigation are not shown to be just and reasonable. Appropriate orders requiring their cancellation, and denying the fourth-section applications, will be entered.

APPENDIX A TO INTERSTATE COMMERCE COMMISSION REPORT

Effective date	Minimum (pounds)	Representative rate changes from Pittsburgh, Pa., to—			
		Arkansas City, Kans.	Oklahoma City, Okla.	Dallas, Tex.	Houston, Tex.
July 28, 1940	40,000	84	86	86	----------
	46,000	----------	----------	----------	78
Mar. 18, 1942	40,000	89	91	91	----------
	46,000	----------	----------	----------	83
May 15, 1943	40,600	84	86	86	----------
	46,000	----------	----------	----------	78
Nov. 1, 1943	40,000	84	86	86	78
July 1, 1946	40,000	89	91	91	83
Jan. 1, 1947	40,000	94	96	96	88
Oct. 13, 1947	40,000	103	106	106	97
Jan. 5, 1948	40,000	113	115	115	106
Jan. 13, 1948	40,000	105	107	107	99
May 6, 1948	40,000	108	110	110	102
Aug. 21, 1948	40,000	110	112	112	104
Jan. 11, 1949	40,000	116	118	118	109
Sept. 1, 1949	40,000	120	122	122	113
Apr. 4, 1951	40,000	122	124	124	115
Aug. 28, 1951	40,000	129.32	131.44	131.44	121.9
May 2, 1952	40,000	138	140.3	140.3	129.95
Dec. 10, 1954	40,000	124.2	140.3	140.3	129.95
Apr. 10, 1955	40,000	124.2	140.3	140.3	129.95
	70,000	110	112	112	104
Aug. 31, 1955	40,000	124.2	140.3	140.3	129.95
	70,000	87	103	112	104
Sept. 10, 1955	40,000	121.9	140.3	140.3	129.95
	70,000	87	103	112	104
Dec. 10, 1955	40,000	130	137	140.3	129.95
	70,000	87	103	112	104
Dec. 17, 1955	40,000	130	137	140.3	129.95
	70,000	87	103	103	70

ORDER

At a Session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D. C., on the 11th day of July, A. D. 1957.

No. 31860

STEEL PIPE—EAST TO SOUTHWEST

INVESTIGATION AND SUSPENSION DOCKET NO. 6491

PIPE, OFFICIAL AND SOUTHERN TERRITORIES TO SOUTHWEST

It appearing, That by order dated August 30, 1955, in No. 31860, division 2 entered upon an investigation into and concerning the lawfulness of rates, charges, regulations, and practices stated in certain schedules described in said order;

It further appearing, That by order dated October 20, 1955, in investigation and Suspension Docket No. 6491 the Commission ordered an investigation into and concerning the lawfulness of the rates, charges, regulations, and practices stated in certain schedules described in said order, and suspended the operation of the schedules until May 26, 1956; that by order dated December 7, 1955, division 2 vacated and set aside the said order of October 20, 1955, as of December 17, 1955, insofar as it suspended the operation of said schedules; that by judgment entered August 20, 1956, the United States District Court for the Southern District of Texas, Houston Division, declared said order of October 20, 1955, to be invalid; and that respondents, in purported conformity with the court decree, resuspended such schedules;

And it further appearing, That a full investigation of the matters and things involved in these proceedings has been made, and that said division, on the

date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel the schedules of rates under investigation, on or before August 23, 1957, upon not less than one day's notice to this Commission and to the general public by filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and that these proceedings be, and they are hereby, discontinued.

Fourth Section Order No. 18751.

STEEL AND WROUGHT IRON PIPE TO KANSAS, OKLAHOMA, AND SOUTHWEST MO.

STEEL AND WROUGHT IRON PIPE TO THE SOUTHWEST

By fourth-section applications Nos. 30890 and 31120, as amended, F. C. Kratzmeir, Agent, for and on behalf of carriers parties to his tariff I. C. C. No. 4116, and other tariffs named in the applications, according as they may participate in the traffic, applied for authority to establish and maintain rates on steel and wrought iron pipe, in carloads, from points in western trunkline, official, and southern territories to points in the Southwest, including Kansas and southwest Missouri, as described in the applications, without observing the long-and-short-haul provision of the Interstate Commerce Act. A hearing having been held, and full investigation of the matters and things involved in the applications having been made, and the division on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which report, and the applications as amended, are hereby referred to

and made a part hereof, and sufficient justification for the relief prayed not having been shown:

It is ordered, That said applications be, and they are hereby, denied.

By the Commission, division 2.

[SEAL] HAROLD D. McCOY,
Secretary.

ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 16th day of October, A. D. 1957.

No. 31860

STEEL PIPE—EAST TO SOUTHWEST

INVESTIGATION AND SUSPENSION DOCKET NO. 6491

PIPE, OFFICIAL AND SOUTHERN TERRITORIES TO SOUTHWEST

FOURTH SECTION APPLICATION NO. 30890

STEEL AND WROUGHT IRON PIPE TO KANSAS, OKLAHOMA AND SOUTHWEST MO.

FOURTH SECTION APPLICATION NO. 31120

STEEL AND WROUGHT IRON PIPE TO THE SOUTHWEST

Upon consideration of (1) the record in the above-entitled proceedings, (2) petition of respondents for reconsideration of the report of the Commission, Division 2, decided July 11, 1957, and replies to the petition by (3) Laclede Steel Company, (4) American Iron and Machine Works Company and Oklahoma City Chamber of Commerce, (5) the motor-carrier protestants, (6) Coyle Lines, Inc., and Dixie Carriers, Inc., (7) John I. Hay Company, (8) American Com-

mercial Barge Line Company, Mississippi Valley Barge Line Company; and Union Barge Line Corporation, and (9) Federal Barge Lines, Inc., and Sioux City & New Orleans Barge Lines, Inc.:

It is ordered, That the petition be, and it is hereby, denied, for the reasons that the findings and conclusions in the report of the Commission, Division 2, alleged to be erroneous, are fully supported by the evidence, and the matters submitted in support of the petition do not present substantial and material grounds to warrant reopening the proceeding for reconsideration.

It is further ordered, That the order entered in these proceedings, July 11, 1957, requiring the respondents to cancel the schedules of rates under investigation upon not less than one day's notice to this Commission and to the general public, which order was stayed pending disposition of the petition, be, and it is hereby, reinstated and modified so as to postpone the effective date thereof to November 20, 1957.

By the Commission.

[SEAL] HAROLD D. McCOY,
Secretary.

U. S. GOVERNMENT PRINTING OFFICE: 1957